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June 29, 2001

VIA HAND DELIVERY

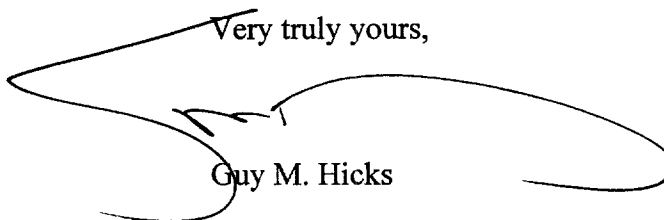
Mr. David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: *Tariff to Introduce CCS7 Access Arrangement Service*
Docket No. 01-00440

Dear Mr. Waddell:

Enclosed please find the original and thirteen copies of BellSouth's Motion to Dismiss Joint Petition. Copies of the enclosed are being provided to counsel of record.

Very truly yours,



Guy M. Hicks

GMH/jej

Enclosure

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In re: *BellSouth Telecommunications, Inc. Tariff to Introduce CCS7 Access
Arrangement Service*
 Docket No. 01-00440

BELLSOUTH'S MOTION TO DISMISS JOINT PETITION

In accordance with the directive of the Tennessee Regulatory Authority ("TRA") during its June 26, 2001 Directors' Conference, and pursuant to Rule 1220-1-2-.03, BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits this Motion to Dismiss the "Joint Petition of XO Tennessee, Inc., US LEC of Tennessee, Inc., Leap Wireless International d/b/a Cricket Communications, and Time Warner Telecom of the Mid-South, L.P." ("the Petition"). As explained below, BellSouth's tariff does not alter or affect the CCS7 rates that any carrier pays in relation to local calls pursuant to an approved interconnection agreement, and it does not alter or affect the CCS7 rates that any carrier pays in relation to interexchange, interstate calls pursuant to BellSouth's F.C.C. No. 1 tariff. Instead, this tariff establishes CCS7 rates in relation to non-local intrastate calls in accordance with the price regulation statutes.

There is no reason to set a "hearing or other appropriate proceeding for purposes of receiving industry input" regarding this valid and effective tariff.¹ The TRA, therefore, should decline to convene a contested case, and it should dismiss the Petition. *See Consumer Advocate Div. v. Greer*, 967 S.W.2d 759, 763 (Tenn. 1998) ("the TRA has the

¹ During the June 26, 2001 Directors' Conference, the TRA noted that the tariff had gone into effect. The Petition's request to suspend the tariff "pending further investigation," therefore, is no longer before the TRA.

power to convene a contested case hearing if it chooses to exercise the authority.). *Accord Consumer Advocate Division v. Tennessee Regulatory Authority*, 2001 WL 575570 at *6 (Tenn. Ct. App. May 30, 2001).

I. THE TARIFF DOES NOT ALTER OR AFFECT THE CCS7 RATES THAT ANY CARRIER PAYS PURSUANT TO APPROVED INTERCONNECTION AGREEMENTS OR THE CCS7 RATES THAT ANY CARRIER PAYS PURSUANT TO BELL SOUTH'S FCC TARIFF.

In order to explain the effect of the CCS7 tariff that is the subject of the Petition, it is helpful to explain what CCS7 service is, how carriers can use BellSouth's CCS7 service, and how carriers paid for this service prior to this tariff. CCS7 provides signaling functionality for call routing and completion as well as access to various databases. CLECs, wireless carriers, and other ILECs operating in Tennessee have at least three options for obtaining this functionality in relation to calls placed by their end users. They can either provide their own CCS7 functionality; obtain CCS7 service from various third-party hub providers such as Illuminet, Southern New England Telephone Corp., or Telecommunications Services Inc.; or obtain CCS7 service from BellSouth.

Carriers choosing to obtain CCS7 service from BellSouth can use the service in relation to three types of calls: (1) local calls; (2) interexchange calls between locations within the state of Tennessee ('non-local intrastate calls"); and (3) interexchange calls between locations in the state of Tennessee and locations in other states ("interstate calls"). Before the CCS7 tariff became effective, BellSouth was compensated for providing CCS7 service for these types of calls in the following manner:

1. When carriers used BellSouth's CCS7 service in relation to local calls, they paid the CCS7 rates set forth in their approved local interconnection agreements with BellSouth;

2. When carriers used BellSouth's CCS7 service in relation to interstate calls, they paid the CCS7 rates set forth in BellSouth's F.C.C. Tariff No. 1; and
3. When carriers used BellSouth's CCS7 service in relation to non-local intrastate calls, *they paid nothing* because BellSouth did not have an intrastate CCS7 tariff.

When this tariff went into effect, the only thing that changed is that instead of receiving CCS7 service in relation to intrastate calls without charge, carriers now pay for this CCS7 service. In other words, under the tariff:

1. When carriers use BellSouth's CCS7 service in relation to local calls, they *still* pay the CCS7 rates set forth in their approved local interconnection agreements with BellSouth;
2. When carriers use BellSouth's CCS7 service in relation to interstate calls, they *still* pay the CCS7 rates set forth in BellSouth's F.C.C. Tariff No. 1; but
3. When carriers use BellSouth's CCS7 service in relation to non-local intrastate calls, they now pay the rates set forth in the tariff that is the subject of the Petition.

II. BELLSOUTH'S VALID AND EFFECTIVE TARIFF COMPLIES WITH THE PRICE REGULATION STATUTES.

As noted above, the CCS7 rates the Petitioners pay in relation to local calls are set forth in the approved local interconnection agreements between each Petitioner and BellSouth. These rates are either the rates established by the TRA in Docket No. 97-01262 in accordance with the standards set forth in sections 251(b) and (c) of the federal Telecommunications Act of 1996 ("the federal Act"), or they are the rates the parties have negotiated without regard to those standards as permitted by section 251(a)(1) of the federal Act. Clearly, the Petitioners cannot challenge these approved rates in a Petition that addresses a tariff that has no effect on those approved rates.

Moreover, the CCS7 rates the Petitioners pay in relation to interstate calls are the rates that are set forth in BellSouth's F.C.C. Tariff No. 1. That interstate tariff has become effective despite the fact that one party raised "objections" to the federal tariff that are similar to the "objections" the Petition raises with regard to the state tariff. After reviewing the objections to its interstate tariff, BellSouth modified the tariff to clarify language in regards to the percent interstate use (PIU) factor. Subsequent to BellSouth revising the PIU language, the petitioner withdrew its opposition to the tariff. Clearly, the Petitioners cannot challenge the rates in an effective FCC tariff in a Petition that addresses a tariff that has no effect on those approved rates.

The only CCS7 rates that properly are subject to the "objections" set forth in the Petition, therefore, are the CCS7 rates in relation to non-local intrastate calls. These rates are governed by the price regulation statutes, and those statutes allow BellSouth to collect "rates that are less than or equal to the maximum permitted by [section 65-5-209]" *See* T.C.A. §65-5-209(b). BellSouth, therefore, may "set rates for non-basic services² as the company deems appropriate, subject to the limitations set forth in subsections (e) and (g)" T.C.A. §65-5-209(h). The Petition does not, and indeed cannot, claim that the CCS7 does not comply with these statutes.

III. THE PETITION'S "OBJECTIONS" TO THE CCS7 TARIFF ARE MERITLESS.

² The CCS7 service that is the subject of this tariff clearly is not a basic service. This tariffed service consists of signaling capabilities, not "an access line, dial tone, touch-tone, and usage." *See* T.C.A. §65-5-208(a)(1). Additionally, as noted above, this tariffed service relates to non-local, intrastate calls. In stark contrast, basic services are provided "within a local calling area." *See id.*

Each of the Petition's "objections" to the CCS7 tariff is meritless. The objection that "BellSouth cannot measure or accurately identify which SS7 messages are interstate, intrastate, or local," for instance, is irrelevant. The tariff clearly states that it is *each carrier* -- and not BellSouth -- that determines its *own* percent local use (PLU) and percent interstate use (PIU)³, subject to BellSouth's audit rights. See Tariff, §E2.3.14.A.1.b. In fact, carriers that are parties to local interconnection agreements with BellSouth already are calculating a PLU and/or PIU. If for some reason a carrier is unable to discern the PLU or PIU for its own traffic, however, the tariff provides a default PIU of 50%. *Id.* §E2.3.14.A.1.a.

Similarly, the "objection" that the tariff "requires that competing carriers develop a PIU/PLU for BellSouth's originating traffic which BellSouth would then adopt and apply to other companies" is irrelevant and wrong. As noted above, BellSouth does not "adopt" or "apply" a PIU/PLU under the tariff. Instead, each carrier develops its own PIU/PLU. In any event, BellSouth is unaware of any reason that a carrier would think that it had to develop a PIU/PLU for *BellSouth's* originating traffic under the tariff.

Moreover, as noted above, the CCS7 rates in this tariff simply do not apply to local traffic that is the subject of approved local interconnection agreements. The allegation that the tariffed "charges would apply to local traffic, and, thus, mandate access charges which would apply in lieu of interconnection agreements" misapprehends the

³ As noted in the Executive Summary BellSouth filed with the tariff, "the terms, conditions, and rates for BellSouth CCS7 Access Arrangement in BellSouth's FCC No. 1 tariff, effective on May 15, 2001 are being mirrored." In other words, the CCS7 rates in relation to intrastate calls are identical to the CCS7 rates in relation to interstate calls. Thus any purported inability to distinguish between non-local intrastate and interstate traffic is irrelevant, because the same rates apply to both types of traffic.

tariff and is simply wrong. The CCS7 rates set forth in approved interconnection agreements will continue to apply in relation to local traffic.

The Petition further objects that the tariff "contains no corresponding reduction to local switching" and that "BellSouth is already recovering its costs through local switching charges and through interconnection agreements." Once again, this tariff simply does not apply to local traffic that is subject to local interconnection agreements. Instead, it applies to intrastate, interexchange traffic, and the CCS7 rates in relation to such traffic are governed solely by the price regulation statutes. Unlike the antiquated rate base, rate of return method of regulation, the price regulation statutes do not base the rates that may be charged for services on the costs of providing the services. Instead, as explained above, the price regulation statutes clearly permit BellSouth to set rates for non-local intrastate CCS7 services "as the company deems appropriate" so long as BellSouth's aggregate rates do not exceed the maximum permitted under the statutes. Any merit that these objections may have had in a bygone era, therefore, was obliterated by the passage of the price regulation statutes.

Finally, the Petition objects that the tariff will require ILECs and CLECs to "recover this 'new' per message charge for SS7" from their end users and that the tariff will "have an impact on all non-BellSouth ILECs and all CLECs resulting in all affected carriers raising their traffic sensitive rates."⁴ If these were valid objections to the tariff, then every rate increase proposed by every regulated carrier would be denied because any

⁴ It is difficult to imagine what impact the tariff would have on "non-BellSouth ILECs" who provide their own CCS7 functionality rather than purchasing it from BellSouth.

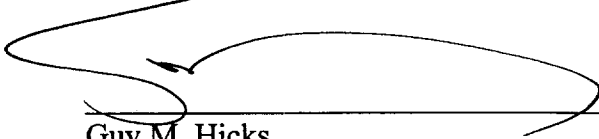
rate increase "will have an impact on" all business customers who purchase the service. Thus, the possibility always exists that business customers who pay the increased rates may raise the prices of the goods and services they sell to others. This unremarkable fact that is a characteristic of a free market economy simply is not a valid basis for denying a proposed rate change.

CONCLUSION

For the reasons set forth above, the TRA should decline to convene a contested case to address this valid and effective tariff, and it should dismiss the Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2001, a copy of the foregoing document was served on the following parties, via the method indicated:

- ☐ Hand
- ☒ Mail
- ☐ Facsimile
- ☐ Overnight

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A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line and a small flourish at the end.